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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

2017 APR 14 A 11:39

TOM FORESE- Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

DOCKETED

APR 14 2017

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY
FOR A HEARING TO DETERMINE THE
FAIR VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

IN THE MATTER OF FUEL AND
PURCHASED POWER PROCUREMENT
AUDITS FOR ARIZONA PUBLIC SERVICE
COMPANY.

DOCKET NO. E-01345A-16-0123

**PROTECTIVE ORDER TO GOVERN THE
TREATMENT OF THE JOINT SOLAR
COOPERATION AGREEMENT**

The JSCA is a separate agreement between APS, the Solar Parties,¹ and certain other entities that are not Intervenors in this case. In general, the JSCA provides that its signatories will refrain from seeking to undermine the Settlement Agreement through ballot initiatives, legislation or advocacy at the Commission.

The signatories to the JSCA deem its contents to be highly confidential. The signatories to the JSCA represent that it contains provisions preventing the disclosure of the JSCA, or the contents thereof, to any person or entity except for an enumerated and limited group of persons who will be required to execute non-disclosure agreements prior to having access to the highly confidential document.

¹ Solar Parties include the Energy Freedom Coalition of America ("EFC"), Vote Solar, the Arizona Solar Energy Industries Association ("AriSEIA"), the Solar Energy Industries Association ("SEIA"), and the Arizona Solar Deployment Alliance ("ASDA").

1 The Moving Parties expressly request that this Protective Order govern the terms and
2 conditions, for purposes of this proceeding, of obtaining access to the JSCA and other matters
3 relating to its treatment. The Commission Staff has requested that the members of the Arizona
4 Corporation Commission (the "Commissioners") their policy advisors, and the presiding
5 Administrative Law Judge (the "ALJ") be granted access to the JSCA, under normal Commission
6 procedures governing confidential information. As the forum, the Commission is being requested to
7 issue a Protective Order to govern the treatment of sensitive information, thereby eliminating the
8 need for individual non-disclosure agreements. The Moving Parties therefore seek this Protective
9 Order to eliminate the need for the Commissioners, their policy advisors, and the ALJ to execute the
10 non-disclosure agreement that is part of the JSCA; and to set forth the terms and conditions of access
11 to the JSCA for purposes of this proceeding.

12 While a general description of the JSCA has been disseminated publicly, as expressly
13 permitted by the JSCA, certain signatories to the JSCA believe that it contains proprietary and non-
14 public information and any additional disclosure of the terms of the JSCA would result in
15 particularized harm to them. Therefore, they desire to limit access to the JSCA in this proceeding to
16 certain specifically enumerated individuals.

17 In order to expedite the exchange of information between the Commission Staff, RUCO,
18 APS, and the Solar Parties (collectively "the Parties"), and the Commissioners, their policy advisors,
19 and the ALJ, with respect to the JSCA and related confidential information in this case, the Parties
20 respectfully request a Protective Order protecting the JSCA and the content thereof as follows:

21 **1. Confidential Information.** APS and the Solar Parties ("Providing Parties") have
22 designated the JSCA, all of its contents, any notes, material referencing, deriving content from, or
23 otherwise containing parts of the JSCA as highly confidential ("Highly Confidential Information").
24 The Providing Parties agree to mark the JSCA as Highly Confidential Information by clearly
25 designating or stamping it as "Highly Confidential" and placing it on colored paper to clearly indicate
26 its confidential nature.

27 ...

1 All notes or other materials that refer to, derive from, or otherwise contain parts of the Highly
2 Confidential Information will also be considered Highly Confidential Information and will be marked
3 and color coded in the same manner. Access to and review of the Highly Confidential Information
4 shall be strictly controlled by the terms of the Protective Order.

5 **2. Use of Highly Confidential Information.** All persons who may be entitled to
6 review, or who are afforded access to Highly Confidential Information by reason of the Protective
7 Order, shall neither use, nor disclose the Highly Confidential Information for any business,
8 commercial, or competitive purpose, or any other purpose other than the preparation for and conduct
9 of proceedings in this Docket and all subsequent appeals, and shall keep the Highly Confidential
10 Information secure as confidential or proprietary information and in accordance with the purposes,
11 intent, and requirements of the Protective Order.

12 **3. Persons Entitled to Review.** Each party who receives Highly Confidential
13 Information pursuant to the Protective Order must limit access to such Highly Confidential
14 Information to the persons specified in this section. Only the persons specified below shall be
15 permitted to review Highly Confidential Information pursuant to the Protective Order, and the
16 conditions under which review will be permitted are as follows:

- 17 a. The original parties to the JSCA who have fully complied with and agreed to be
18 bound by the terms thereof;
- 19 b. Members of Commission Staff who have previously executed Exhibit A (Non-
20 Disclosure Agreement) to the Protective Order;
- 21 c. The Executive Director of the Residential Utility Consumers Office ("RUCO")
22 and his legal counsel who have previously executed Exhibit A to the Protective
23 Order;
- 24 d. The ALJ, who shall not be required to execute Exhibit A;
- 25 e. The Commissioners and their policy advisors who shall not be required to execute
26 Exhibit A; and
- 27 f. Any court reporter, who has previously executed Exhibit A to the Protective
28 Order.

1 Any dissemination of Highly Confidential Information beyond the persons set forth above is
2 strictly prohibited and shall be a violation of the Protective Order. Nothing in the Protective Order is
3 intended to modify the provisions of the JSCA as they pertain to the signatories to the JSCA to
4 otherwise comply with any provisions of the JSCA. The Protective Order does not impact the JSCA
5 signatories' ability to agree to share the JSCA with others outside the context of this proceeding.

6 **4. Nondisclosure Agreement.** Other than the Commissioners, their policy
7 advisors, and the ALJ, any party, person, or entity specified in Section 3 above, who intends to
8 receive Highly Confidential Information, shall execute the Non-Disclosure Agreement prior to
9 receiving the Highly Confidential Information. All parties, persons, and entities who receive Highly
10 Confidential Information pursuant to the Protective Order, regardless of whether such party, person,
11 or entity has signed the Non-Disclosure Agreement, are bound by the Protective Order and shall not
12 disclose such Highly Confidential Information to any person, except as provided herein. All Highly
13 Confidential Information shall be filed under seal and subject to in camera inspection and
14 examination only.

15 The Non-Disclosure Agreement, shall contain terms that require the person to read a copy of
16 the Protective Order and to certify in writing that he/she consents to be bound by its terms. The Non-
17 Disclosure Agreement shall contain the signatory's full name, employer, job title and job description,
18 business address and the name of the party with whom the signatory is associated.

19 **5. (a) Notes.** Limited notes regarding Highly Confidential Information may be taken
20 by those receiving Highly Confidential Information for the express purpose of preparing for
21 participation in this proceeding. Such notes shall be treated as Highly Confidential Information for
22 purposes of the Protective Order, and shall be destroyed after the conclusion of the proceedings in
23 accordance with subsection 5(b).

24 **(b) Destruction.** All persons listed in Sections 3(b)-3(f) receiving Highly
25 Confidential Information shall destroy all such Highly Confidential Information within thirty (30)
26 days after the conclusion of the proceedings in this matter, including any appeals. The person
27 destroying such Highly Confidential Information shall advise the party who provided the Highly
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1 Confidential Information of the fact of destruction within a reasonable time after the date of
2 destruction.

3 **6. Objections to Admissibility.** The furnishing of Highly Confidential Information
4 pursuant to the Protective Order shall in no way limit the right of the Providing Party to object to its
5 relevance or admissibility in proceedings before this Commission.

6 **7. Requests by Third Parties for the JSCA in this Proceeding.** The Moving Parties
7 agree that the Protective Order is intended to govern the provision of the JSCA by APS and the Solar
8 Parties to the Commissioners, their policy advisors, the ALJ, Commission Staff, and RUCO. In the
9 event that any other party to this Docket requests a copy of the JSCA; the Providing Parties shall have
10 five (5) business days from the date the request is docketed to initiate a protective proceeding in this
11 Docket. Upon expiration of five (5) business days from the date a written request is docketed, if a
12 protective proceeding is not requested, the Highly Confidential Information shall be made available
13 to the requesting party under seal (upon execution of Exhibit A) unless APS or any of the Solar
14 Parties notify the Commission that they have resolved the issue with the Requesting Party.

15 In any requested protective proceeding, APS or any of the Solar Parties shall file a motion
16 presenting the specific grounds upon which they claim the request for the Highly Confidential
17 Information should be denied and why they believe the Highly Confidential Information should not
18 be disclosed. Staff and the Requesting Party shall have an opportunity to respond to the motion. The
19 motion by APS or any of the Solar Parties may be ruled upon by either the Commission or an
20 assigned Commission ALJ.

21 APS or any of the Solar Parties may provide to the Commission or the ALJ, the Highly
22 Confidential Information referenced in the motion without waiving any claim that the information
23 should remain confidential under the terms of the Protective Order. Any Highly Confidential
24 Information provided shall be kept under seal for the purpose of permitting inspection by the
25 Commission or the ALJ prior to ruling on the motion. If the Commission or ALJ rules that the
26 Highly Confidential Information should be released, APS and the Solar Parties shall be given five (5)
27 business days prior to the actual release of the Highly Confidential Information to bring a Court
28 action if they so desire to prevent its disclosure.

1 **8. Protective Proceedings to Prevent Disclosure to the Public.** APS and the Solar
2 Parties are providing the JSCA under the condition of confidentiality. APS and the Solar Parties
3 object to any public disclosure of the Highly Confidential Information. In the event the Commission
4 receives any request for public disclosure of the Highly Confidential Information the Commission
5 shall provide notice to the Providing Parties within five (5) days of receipt of that request. Based
6 upon the provisions of this Protective Order, the request for public disclosure of any Highly
7 Confidential Information will be denied, unless the Highly Confidential Information has already been
8 publicly disclosed, or unless the Commission is legally compelled to disclose the confidential
9 information.

10 In the event that the Commission becomes legally compelled (by public records request,
11 deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar
12 process) to disclose any Highly Confidential Information, the Commission shall provide the
13 Providing Parties with prompt written notice of such requirement, in no event later than five (5) days
14 from the date of knowledge of the requirement, so the Providing Parties may seek an appropriate
15 remedy and/or waive compliance. The Providing Parties agree that upon receipt of such notice, they
16 will either undertake to oppose disclosure of the Highly Confidential Information or waive
17 compliance with the Protective Order. In the event that disclosure of Highly Confidential
18 Information is ordered, the Commission agrees to furnish only that portion of the Highly Confidential
19 Information that is legally required.

20 **9. Judicial Proceedings Related to Requests for Disclosure.** In the event a judicial
21 proceeding is initiated against the Commission to obtain Highly Confidential Information, to the
22 extent the Providing Parties are not specifically named in the action as real parties in interest, they
23 agree to join in the action as co-defendants. APS also agrees to indemnify and hold the Commission
24 harmless from any assessment of expenses, attorneys' fees or damages under A.R.S. Section
25 39.121.02 or any other law up to \$150,000.00, to the extent assessed against the Commission
26 resulting from denial of access by the Commission to the information, data, records or studies
27 subsequently found to be non-confidential.

1 **10. (a) Receipt into Evidence.** Provision is hereby made for receipt of the JSCA into
2 evidence in this proceeding, subject to the following conditions and all other conditions contained in
3 the Protective Order:

4 (1) Only one (1) copy of the JSCA designated by the Providing Party to be placed
5 in a sealed record shall be made.

6 (2) The copy of the JSCA to be placed in the sealed record shall be tendered by
7 counsel for a Providing Party to the Commission, and maintained in
8 accordance with the terms of the Protective Order.

9 (3) The JSCA shall not be filed in the Docket.

10 **(b) Seal.** While in the custody of the Commission, all Highly Confidential
11 Information shall be marked "HIGHLY CONFIDENTIAL – UNDER PROTECTIVE ORDER" IN
12 DOCKET NOS. E-001345A-16-0036 and E-01345A-16-0123, and shall not be examined by any
13 person except under the conditions set forth in the Protective Order.

14 **(c) In Camera Hearing.** Highly Confidential Information may only be orally
15 discussed, referenced, or disclosed by any party, the ALJ, the Commissioners or their policy advisors
16 in an in-camera hearing attended only by persons authorized to have access to the Highly
17 Confidential Information under Section 3 of this Agreement, who have already signed the NDA. Any
18 record or transcript of such in-camera proceedings shall be sealed and treated in the same manner as
19 if it were the JSCA itself.

20 **(d) Access to Record.** Access to sealed testimony, records, and information shall
21 be limited to the ALJ, Commissioners, and their respective policy advisors, and persons who are
22 entitled to review Highly Confidential Information pursuant to Subsection 3 above and have signed a
23 NDA, unless such Highly Confidential Information is released from the restrictions of the Protective
24 Order either through the consent of the Providing Parties or pursuant to the final order of a court
25 having final jurisdiction.

26 **(e) Appeal/Subsequent Proceedings.** Sealed portions of the record in the
27 proceedings may be forwarded to any court of competent jurisdiction for purposes of an appeal, but
28 Highly Confidential Information and any references to it shall be submitted under seal as designated

1 herein for the information and use of the court. If a portion of the record is forwarded to a court, the
2 providing party shall be notified which portion of the sealed record has been designated by the
3 appealing party as necessary to the record on appeal.

4 (f) **Return.** Unless otherwise ordered, Highly Confidential Information, including
5 transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal,
6 shall continue to be subject to the protective requirements of this Order, and shall, at the providing
7 party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party,
8 within thirty (30) days after the entry of a non-appealable order. If the Providing Party elects to have
9 Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in
10 writing that the material has in fact been destroyed.

11 **12. Use in Pleadings.** Where references to Highly Confidential Information in the sealed
12 record or with the Providing Party is required in pleadings, briefs, arguments, or motions (except as
13 provided in Section 6), it shall be by citation of title or exhibit number or some other description that
14 will not disclose the substance of the Highly Confidential Information. Any use of or substantive
15 references to Highly Confidential Information shall be placed in a separate section of the pleading or
16 brief and submitted to the ALJ or the Commission under seal. This sealed section shall be served
17 only on those persons who are permitted to view the JSCA as set forth in Subsection 3. All of the
18 restrictions afforded by the Protective Order apply to materials prepared and distributed under this
19 section.

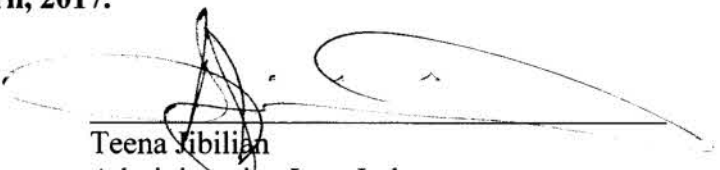
20 **13. Agreement to Treat the JSCA as Highly Confidential Information for purposes of**
21 **this Proceeding.** By agreeing to this Order, the Commission Staff and RUCO have agreed for
22 purposes of this proceeding to treat the JSCA and related information as Highly Confidential. The
23 Commission Staff and RUCO are not parties to the JSCA and thus can make no representation that
24 the JSCA is either in fact or as a matter of law, a trade secret or of a proprietary, confidential or
25 legally protected nature.

26 **14. Breach of Order.** Any person who has received Highly Confidential Information
27 pursuant to the terms of the Protective Order, in any legal action or complaint filed in any court
28

1 alleging breach of the Protective Order, shall, at the written request of the Commission, name the
2 Arizona Corporation Commission as a Defendant therein.

3 **15. Non-Termination.** The provisions of the Protective Order shall not terminate at the
4 conclusion of this proceeding.

5 Entered this 14th day of April, 2017.

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7 
8 Teena Jibilian
9 Administrative Law Judge
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On this 14th day of April, 2017, the foregoing document was filed with Docket Control as a Procedural Order – Protective Order, and copies of the foregoing were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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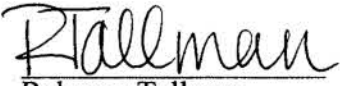
20 By: 
21 Rebecca Tallman
22 Assistant to Teena Jibilian

EXHIBIT "A"

NON-DISCLOSURE AGREEMENT

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated April ____, 2017, *IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, Docket No. E-01345A-16-0036; AND IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDIT FOR ARIZONA PUBLIC SERVICE COMPANY, Docket No. E-01345A-16-0123* and agree to be bound by the terms and conditions of such Protective Order.

Name

Signature

Employer or Firm

Business Address

Position

Job Description

Date